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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,625	07/26/2004	Nicholas J. Cusick	34625	4343
23589	7590	05/04/2006		EXAMINER
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108				CHAMBERS, MICHAEL S
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/710,625	CUSICK, NICHOLAS J.	
	Examiner Mike Chambers	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 February 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-44, is/are pending in the application.
- 4a) Of the above claim(s) 7,8,22,30 and 39 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,9-21,23-29,31-38 and 40-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-6, 9-21, 23-29, 31-38, 40-44 is acknowledged. Claims 7-8, 22, 30, 39 are withdrawn from further consideration, as directed to claims non-elected without traverse, 37CFR1.142.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "overlie the playing surface of the post" is vague and indefinite. One of ordinary skill in the art would not be able to determine the metes and bounds of the invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, are rejected under 35 U.S.C. 102(e) as being anticipated by Tien (6991568). Tien discloses a goal including a pair of spaced apart upright posts and a cross post extending between the uprights posts, each of said posts presenting a generally forward and sideward facing playing surface; and a goal pad removably wrapped at least partly around at least one of the posts to overlie the playing surface, said goal pad comprising an elongated body presenting a longitudinally extending slot defined between opposed longitudinal edges, said body being formed of a compressible and resilient material that provides impact- cushioning along the playing surface and permits resilient flexing thereof so that the edges are resiliently separable to receive the at least one post within the slot as the goal pad is installed or removed, said pad being devoid of structure extending across the slot for securing the edges relative to one another, such that the body is self-retained on the at least one post (fig 1). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Tien discloses posts similarly shaped and dimensioned (fig 1).

As to claim 3 : Tien discloses at least one additional pad (fig 1).

As to claim 4 : Tien discloses at least one post (fig 1).

Also,

Claims 1-6, 9,17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter (NPL). Porter discloses a soccer goal including a pair of spaced apart upright posts and a cross post extending between the uprights posts, each of said posts presenting a generally forward and sideward facing playing surface; and a goal

pad removably wrapped at least partly around at least one of the posts to overlie the playing surface, said goal pad comprising an elongated body presenting a longitudinally extending slot defined between opposed longitudinal edges, said body being formed of a compressible and resilient material that provides impact- cushioning along the playing surface and permits resilient flexing thereof so that the edges are resiliently separable to receive the at least one post within the slot as the goal pad is installed or removed, said pad being devoid of structure extending across the slot for securing the edges relative to one another, such that the body is self-retained on the at least one post. (pg 1,2,3).

As to claim 2 : Porter discloses posts similarly shaped and dimensioned (pg 1,2,3).

As to claim 3 : Porter discloses at least one additional pad (pg 1,2,3).

As to claim 4 : Porter discloses at least one post (pg 1,2,3).

As to claims 5 and 6 : Porter discloses a post and pad with orthogonal shapes (pg 1,2,3).

As to claim 9 : Porter discloses a pad overlying the front section (pg 1,2,3).

As to claim 17 : Porter discloses a flexed and un-flexed condition (pg 1,2,3).

As to claim 19 : Porter discloses an open slot (pg 1,2,3).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Percoraro et al as applied above. The PTO does not have the means to test the

resiliency of the foam material. The specification provides no unexpected or surprising results in using the resiliency of the foam material claimed. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent materials including one have a Resiliency test value of at least 35 based on cost and design considerations.

Also

Claims 1-6,9-12,17,19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meeks et al (5839733) in view of Menichini (5006386). Meeks et al discloses the elements of claim 1, however it fails to clearly disclose the use of a resilient goal protector said protector being devoid of structure extending across the slot for securing the edges. Menichini discloses a resilient goal protector said protector being devoid of structure extending across the slot for securing the edges (3:65-4:2,3:5-21, fig 1,4,6). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the pad protector of Menichini with the apparatus of Meeks in order to increase the safety of the person using the goal.

As to claim 2 : Menichini discloses posts similarly shaped and dimensioned (fig 1,4,6).

As to claim 3 : Menichini discloses at least one additional pad (fig 1,4,6).

As to claim 4 : Meeks discloses at least one post (fig 1,).

As to claims 5 and 6 : Menichini discloses a post and pad with orthogonal shapes (fig 1,4,6).

As to claims 9 and 10 : Menichini discloses a pad overlying the front section (fig 1,4,6).

As to claim 11 : Menichini discloses at least one pad extending across a rear section (fig 1, 4,6).

As to claims 12, 20 : See claim 1 rejection.

As to claim 17 : Menichini discloses a flexed and un-flexed condition (fig 1,4,6).

As to claim 19 : Menichini discloses an open slot (fig 1,4,6).

As to claim 21 : Menichini discloses parallel cross sections (fig 1,4,6).

Also,

Claims 1-5,9-12,17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5857928) in view of Safefoam (NPL). Stewart discloses the elements of claim 1, however it fails to clearly disclose the use of a resilient goal protector said protector being devoid of structure extending across the slot for securing the edges. Safefoam discloses a resilient goal protector said protector being devoid of structure extending across the slot for securing the edges (pg 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the pad protector of Safefoam with the apparatus of Stewart in order to increase the safety of the person using the goal.

As to claim 2 : Safefoam discloses posts similarly shaped and dimensioned (pg 2).

As to claim 3 : Safefoam discloses at least one additional pad (pg 2).

As to claim 4 : Stewart discloses at least one post (fig 1).

As to claim 5 : Safefoam discloses a post and pad (pg 2).

As to claims 12 : See claim 1 rejection.

As to claims 17 : Safefoam discloses a flexed and un-flexed condition (pg 2).

As to claim 19 : Safefoam discloses an open slot (pg 2).

Claims 6, 9,10,11,20,21,26-29, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5857928) in view of Safefoam (NPL) as applied above and further in view of Official Notice. Official Notice is taken that the use of circular and square cross sections for goal frames is well known in the art. The specification provides no unexpected or surprising results in using a square or circular cross section post. It would have been obvious to one of ordinary skill in the art to select any one of several equivalent cross sections including a square cross sections based on cost and design considerations. The PTO does not have the means to test the resiliency of the foam material. The specification provides no unexpected or surprising results in using the resiliency of the foam material claimed. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent materials including one have a Resiliency test value of at least 35 based on cost and design considerations.

As to claim 9 : See claim 6 rejection. It would have been obvious to one of ordinary skill in the art to have modified the Safefoam goal protector to a square shape to better fit and protect the player.

As to claim 10 : Regarding claim 10, Safefoam does not disclose expressly the square shape. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the claimed pad shape, because Applicant has not disclosed that a goal and pad with an orthogonal shape , provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform

equally well with either the circular shape taught by Safefoam or the claimed orthogonal shape because both cross sections perform the same function of forming the goal.

Therefore, it would have been an obvious matter of design choice to modify the cross section to an orthogonal shape to obtain the invention as specified in the claim.

As to claim 11 : See claim 10 rejection. The pad would extend at least possibly across the rear section.

As to claims 20, : See claim 10 rejection. The pad would extend at least possibly across the rear section.

As to claim 21 : See claim 10 rejection. The pad sides would have parallel sides.

As to claim 26: See claim 20 rejection. The pad would be less convergent when the body is in the flexed position.

As to claims 27, and 28 : See claim 26 rejection.

As to claim 29 : See claim 28 rejection. The wall would have an orthogonal shape.

As to claim 33 : See claim 27 rejection. The slot would be opened in the flex position.

As to claim 34 : See claim 27 rejection. The pad sides would naturally have parallel sides.

Claims 14-16, 18 ,24-25,32, ,43, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5857928) in view of Safefoam (NPL) and Official Notice as applied above. The PTO does not have the means to test the resiliency of the foam material, therefore it is assumed to be a natural characteristic of the material. The specification provides no unexpected or surprising results in using the resiliency of the foam material claimed. It would have been obvious to one of ordinary skill in the art to

have selected any one of several equivalent materials including one have a Resiliency test value of at least 35 based on cost and design considerations.

As to claim 15: See claim 14 rejection. The pad would naturally be less convergent when the body is in the flexed position.

As to claims 16,18,24: See claim 14 rejection.

As to claim 25: See claim 24 rejection. The pad would naturally be less convergent when the body is in the flexed position.

As to claims 32 and 35: See claim 14 rejection.

As to claims 36-38: See claim 35 rejection. The pad would naturally have a slot side portions and be orthogonal in shape.

As to claim 40: See claim 36 rejection. The pad would naturally have an open slot.

As to claim 41 : See claim 36 rejection. The pad sides would naturally have parallel sides.

As to claim 43: See claim 35 rejection.

As to claim 44: See claim 14 rejection. The specification provides no unexpected or surprising results in using an skin urethane the resiliency of the foam material claimed. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent materials including one being made of integral skin urethane foam.

Claims 13,23,31, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5857928) in view of Safefoam (NPL) and Official Notice as applied above. The specification provides no unexpected or surprising results in having the foam having a maximum thickness of 5/8". It would have been obvious to one of

ordinary skill in the art to have selected any one of several equivalent thicknesses based on cost and design considerations.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5857928\*5839733\*5006386\*6991568\*

Michael Chambers  
Examiner  
Art Unit 3711

April 21, 2006

  
EUGENE KIM  
SUPERVISORY PATENT EXAMINER